

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

IVAN D.,

Claimant,

vs.

WESTSIDE REGIONAL CENTER,

Service Agency.

OAH Case No. 2012010377

DECISION

Chris Ruiz, Administrative Law Judge (ALJ), Office of Administrative Hearings, State of California, heard this matter at the Westside Regional Center, in Los Angeles, on February 7, 2012.

Ivan D. (Claimant) was represented by his mother, Imelda E. (Mother).¹

Lisa Basiri, Fair Hearing Coordinator, represented Westside Regional Center (WRC or the service agency).

Oral and documentary evidence was received and argument made. The record was closed and the case was submitted for decision on February 7, 2012.

ISSUES

The following issue is to be decided by the ALJ:

Shall the service agency be allowed to reduce funding of respite hours from 28 to 21 hours per month?

¹ Claimant and his family are referred to by their initials or family titles to protect their confidentiality.

FACTUAL FINDINGS

1. Claimant is a 15 year-old young man who is a consumer of the service agency by reason of his diagnosis of mild mental retardation.
2. Claimant filed his fair hearing request on December 8, 2011.
3. The service agency currently funds respite at a rate of 28 hours per month. This level has been in place for several years. Claimant needs to be supervised at all times. Claimant is in school, or traveling to school, for approximately eight hours per day. The service agency also funds 55 hours of specialized supervision per month. Claimant also receives 47 hours per month of support from In-Home Supportive Services (IHSS). Thus, Claimant is supervised for approximately eight hours per day, not including the respite at issue.
4. Mother is concerned that she “soon” plans to attend school and that she will not have sufficient supervision for Claimant. While Mother’s concerns are understandable, Claimant’s future needs can not be known until such time as Mother actually attends school. At that time, Mother can, if necessary, seek additional assistance from the service agency or IHSS.
5. The service agency established that, at this time, Claimant’s needs only require the service agency to fund respite at a rate of 21 hours per month.

LEGAL CONCLUSIONS

1. The Lanterman Developmental Disabilities Act (Lanterman Act) governs this case. (Welfare and Institutions Code sections 4500 et seq.)² A state level fair hearing to determine the rights and obligations of the parties, if any, is referred to as an appeal of the service agency's decision. Claimant properly and timely requested a fair hearing and therefore jurisdiction for this case was established. (Factual Findings 1-2.)
2. Where a claimant seeks to establish the propriety of a service not previously agreed to by the service agency, the burden is on that appealing claimant to demonstrate the service agency's decision is incorrect. Where the service agency seeks to discontinue a service it has previously funded, the service agency has the burden to demonstrate that its decision is correct. In this case, the service agency had the burden of establishing that respite hours should be reduced.
3. Claimant’s present needs only require the service agency to fund respite at a rate of 21 hours per month. (Factual Findings 1-5.)

² All further statutory references are to the Welfare and Institutions Code.

ORDER

Claimant Ivan D.'s appeal of the Westside Regional Center's decision to reduce funding for respite hours from 28 hours per month to 21 hours per month is denied. Westside Regional Center may reduce funding for respite hours to 21 hours per month.

IT IS SO ORDERED.

DATED: April____, 2012.

CHRIS RUIZ
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is the final administrative decision. Both parties are bound by this decision. Either party may appeal this decision to a court of competent jurisdiction within 90 days.